

PROPOSED:

Chapter 77, DISORDERLY CONDUCT

§ 77-1. Definitions: Word Usage.

For the purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural. The word "shall" is always mandatory and not merely directory.

TOWN - The Town of Fenwick Island, Delaware, with administrative offices at 800 Coastal Highway, Fenwick Island, Delaware 19944.

EMERGENCY - An unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, natural disaster or automobile accident or any situation requiring immediate action to prevent serious bodily injury or loss of life.

JUVENILE OR MINOR - Any unemancipated person under the age of 18 or, in equivalent phrasing often herein employed, any person 17 or less years of age.

PARENT - Any person having legal custody of a juvenile as a natural or adoptive parent, as a legal guardian, as a person who stands in loco parentis or as a person to whom legal custody has been given by court order.

PERSON -- Includes firms, companies, corporations, partnerships, associations or any organization entity as well as individuals.

PUBLIC PLACE - Any place to which the public or a substantial group of the public has access and includes, but is not limited to, the public beach, jetties, wharfs, docks, boardwalk, streets, alleys, sidewalks, parking lots, common areas of churches and condominiums, restaurants, shops, cafes, arcades and similar areas that are open to the use of the public. As a type of "public place," a street is a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or for pedestrian travel. "Street" includes that legal right-of-way, including but not limited to the cartway of traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street.

REMAIN - To loiter, idle, wander, stroll, play, stay behind, tarry or stay unnecessarily in a public place, including the congregating of groups (or of interacting minors) totaling four or more persons in which any juvenile involved would not be using the streets for ordinary or serious purposes such as mere passage or going home, or to fail to leave the premises of an establishment when requested to do so by a police officer or the operator of an establishment. To implement this provision with additional precision and precaution, numerous exceptions are expressly defined in this Chapter.

TIME OF NIGHT - As referred to herein is based upon the prevailing standard of time, whether Eastern Standard Time or Eastern Daylight Saving Time, generally observed at that hour by the public in the Town.

YEARS OF AGE - Continues from one birthday, such as the seventeenth to (but not including the day of) the next, such as the eighteenth birthday, making it clear that 17 or less years of age is herein treated as equivalent to phrase "under 18 years of age."

ARTICLE I
Exposure in Public

§ 77-2. Urinating in public.

No person shall urinate or defecate in any public place or in any place on private property not designed for the disposal of human waste in the Town of Fenwick Island, Delaware.

§ 77-3. Disrobing in public.

No person shall disrobe or change his clothing from bathing suit to street clothes or otherwise in any motor vehicle, in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-4. Engaging in sexual acts in public.

No person shall engage in sexual intercourse or any immoral acts in any motor vehicle in any public place or in any place not enclosed from the view of others in the Town of Fenwick Island, Delaware.

§ 77-5. Violations and penalties.

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE II
Disorderly Conduct

§ 77-6. A person may be found guilty of disorderly conduct when:

- A. The behavior intentionally causes public inconvenience, annoyance or alarm to any other person or creates a risk thereof by:
- (1) Engaging in fighting or in violent, tumultuous or threatening behavior;
 - (2) Making an unreasonable noise or an offensively coarse utterance, gesture or display or addressing abusive language to any person present;
 - (3) Disturbing any lawful assembly or meeting of persons without lawful authority;
 - (4) Obstructing vehicular or pedestrian traffic;
 - (5) Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse;
 - (6) Creating a hazardous or physically offensive condition which serves no legitimate purpose;
or
 - (7) Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

- B. The behavior results in a course of disorderly conduct, as defined in Subsection A of this section, which is likely to cause substantial harm or serious inconvenience, annoyance or alarm and refuses or knowingly fails to obey an order to disperse made by a police officer to the participants.

§ 77.7. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE III
Disorderly Dwelling Units

§ 77.8. Findings; purpose.

- A. The Town Council has determined that at various times, particularly during the late spring and summer, the occupants or users of some dwelling units in the Town of Fenwick Island use those dwelling units for the purpose of engaging in disorderly and disruptive conduct, loud and disturbing noises, public intoxication and other violent and tumultuous behavior. The Town Council has also determined that a number of persons in legal possession of dwelling units in the Town of Fenwick Island are engaging in the practice of allowing such dwelling units, designed for occupancy by essentially single families, to be occupied or used by groups of persons, frequently but not necessarily comprised of minors with insufficient adult supervision. The Town Council has further determined that these practices encourage incidents of disorderly conduct, loud and disturbing noises, public intoxication, violent and tumultuous behavior, disturbing the peace and other similar acts which are detrimental to the public health, safety, peace and welfare of the Town.
- B. The Town Council has further determined that the persons entitled to lawful possession of such premises who fail to take appropriate measures to prevent recurrences of such incidents after due notice of previous disturbances by persons occupying or using the premises must be held responsible for allowing such conduct to occur on those premises.
- C. It is, therefore, declared to be the purpose and intent of this Article to prohibit the use of dwelling units in the Town of Fenwick Island for disorderly and other disruptive conduct by imposing civil penalties not only upon the occupants and/or users of such premises but also by imposing civil penalties on those persons in possession of any premises in the Town who, after notice of a previous conviction for conduct proscribed by this Article, fail to take appropriate actions to prevent a subsequent violation.

§ 77.9. Unlawful acts by occupants and/or users.

Any person occupying or present on a premises who by himself or in concert with other occupants and/or users causes public inconvenience, annoyance or alarm to any other person or persons or who creates an unreasonable risk thereof by engaging in or causing any of the following conduct shall be violating this article:

- A. Making, creating or permitting any unreasonably loud, disturbing and unnecessary noise or making, creating or permitting any noise of such character, intensity or duration as to be detrimental to the life, health and welfare of any person or which disturbs, injures or endangers the comfort, repose, peace or safety of any individual. By way of example and not in limitation, the following shall be deemed to be unreasonably loud, disturbing and unnecessary noises:

(1) Playing any radio, phonograph, tape deck or musical instrument in such a manner or at such a volume, particularly between the hours of 12:00 a.m. and 8:00 a.m., as to annoy or disturb the quiet, comfort or repose of any person in any other dwelling unit, apartment or commercial lodging room.

(2) The blowing of any horn, whistle or signal device, except as a danger signal, for an unreasonable and unnecessary period of time.

(3) Yelling, shouting or singing at such volume as to be plainly and disturbingly audible to the human ear outside the premises.

§ 77.10. Unlawful acts by persons entitled to lawful possession.

A._ Any person(s) entitled to lawful possession who, after notice as herein provided, allows, permits or fails to take affirmative action to prevent repeated violations of this Article shall be deemed to be promoting the use of a dwelling unit for disorderly or other disruptive conduct in violation of this Article.

B._ A person(s) in lawful possession shall be presumed to have allowed, permitted or failed to take affirmative action to prevent repeated violations of this Article where a violation of § [77-9](#) of this Article occurs after such person entitled to lawful possession has, within the past three months, previously been provided actual notice by the Fenwick Island Police Department of a previous conviction for conduct proscribed by § [77-9](#) of this Article.

C._ "Actual notice," as used in Subsection [B](#), shall mean verbal or written notice to one or more of the person(s) entitled to legal possession. If written notice is attempted, it shall be deemed effective by mailing a written notice thereof to the person entitled to lawful possession at his or her last known mailing address by certified mail, return receipt requested, with proper postage affixed. If such notice comes back undelivered (except refused), the Town shall exercise reasonable efforts to provide actual notice by some other means.

D. In the case of a single-family residential property subject to a rental license, oral and written notice of each such violation shall be given to the recorded license holder and his/her realtor within five business days. The license may be revoked if there have been three oral and written notices during a calendar year of violation of §77-9 of this chapter. Such license revocation may be immediate, or deferred to the entire rental season for the following year, or both.

§ 77.11. Violations and Penalties

Any person found guilty of violating any of the provisions of this Article shall, upon conviction thereof, be subject to a fine of \$200. Each day that a person continues to violate the provisions of this Article shall be deemed a separate offense.

ARTICLE IV
Juvenile Curfew

§ 77.12. Policy.

It shall be unlawful for any person 17 years or less of age (under 18) to be or remain in or upon a public place within the Town of Fenwick Island during the period beginning at 1:00 a.m. and ending at 5:00 a.m.

§ 77.13. Exceptions.

The following shall constitute valid exceptions to the operation of this Article:

- A. Accompanied by parent. When a juvenile is accompanied by a parent of such juvenile.
- B. Accompanied by authorized adult. When a juvenile is accompanied by an adult authorized by a parent of such juvenile to take said parent's place in accompanying said juvenile for a designated period of time and purpose within a specified area.
- C. Errand directed by parent. When the juvenile is on an errand as directed by his/her parent.
- D. Emergency. When a juvenile is involved in or assisting in an emergency, including, by way of example and not in limitation, responding as a member of a volunteer fire company to a fire company or paramedic call.
- E. First Amendment rights. When a juvenile is exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly.
- F. Reasonable necessity. In case of reasonable necessity for the juvenile remaining in a public place but only after the juvenile's parent has communicated to the Chief of Police or the person designated by the Chief of Police to receive such notifications the facts establishing the reasonable necessity relating to a specified public place at a designated time for a described purpose, including points of origin and destination. A copy of the communication, or of the police record thereof, duly certified by the Chief of Police to be correct, with an appropriate notation of the time it was received and of the names and addresses of the parent and juvenile shall be admissible evidence.
- G. On own or neighbor's property. When a juvenile is on the sidewalk or property where the juvenile resides or on either side of or across the street from the place where the juvenile resides and the adult owner or resident of that property has given permission for the juvenile to be there.
- H. Attending and returning home within one hour of official activity. When a juvenile is attending or is returning home by a direct route (without any unnecessary stop or detour) from and within one hour of any religious, recreational or other organized activity supervised by adults, sponsored by the Town, a recognized charitable, benevolent or civic association or a similar entity that takes responsibility for the minor.
- I. Employment necessity. When the juvenile is legally employed, going to or returning home from employment.
- J. Interstate or intrastate travel. When the juvenile is, with parental consent, in a motor vehicle, engaged in normal interstate or intrastate travel through the Town or originating or terminating in the Town.
- K. Married. When the juvenile is married or has been married pursuant to state law.

§ 77.14. Town responsibility limited; parental responsibilities.

- A. The foregoing exceptions to the operation of this Article shall act only to create a waiver of enforcement and affirmative defense(s) to such enforcement. By authorizing such exceptions, neither the Town nor any member of the Police Department shall assume any affirmative obligation or duty to supervise the well-being of any juvenile acting pursuant to such authorized exception.
- B. It shall be unlawful for a parent having legal custody of a juvenile knowingly to permit or by inefficient control to allow the juvenile to remain in any Town public place under circumstances not constituting an exception to, or otherwise beyond the scope of, this Article. The term "knowingly" includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall, therefore, be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.
- C. It shall be unlawful for any parent to "knowingly" (as defined by this Chapter) provide any false authorization, information or certification, written or verbal, to the Town Police Department in order to obtain an exception to the operation of this Article under § 77-12 hereof.

§ 77.15. Enforcement procedures.

- A. If a police officer reasonably believes that a juvenile is in a public place in violation of this Article, the officer shall require the juvenile to provide his or her name, address and telephone number and how to contact his or her parent or guardian. No juvenile shall be issued a citation or taken into custody for a violation of this Article unless the police officer first affords that minor an opportunity to explain his or her conduct. In determining the age of the juvenile and in the absence of convincing evidence such as a birth certificate or driver's license, a police officer shall use his or her best judgment in determining age.
- B. If the police officer reasonably concludes that the juvenile is in violation of this Article, the officer may, depending upon the circumstances (e.g., age of the juvenile, hour of night, juvenile's means of transportation, juvenile's physical condition and whether parents could be reached) take the juvenile into custody pursuant to 10 Del. C. § 1004 or issue the juvenile a citation charging him or her with a violation of this Article and order the juvenile to go promptly home. If the juvenile is issued a citation, the Chief of Police shall send the parent or guardian of the juvenile written notice of the violation as set out in Subsection E hereof.
- C. Notwithstanding § 77-15 B of this Article, when a police officer has reasonable grounds to believe that the juvenile has engaged in delinquent conduct, the procedure shall then be to take the juvenile to the police station, where a parent or guardian shall immediately be notified to come for the juvenile, whereupon the parent or guardian and the juvenile shall be questioned. This is intended to permit ascertainment, under constitutional safeguards, of relevant facts and to centralize responsibility in the person designated there and then on duty for accurate, effective, fair, impartial and uniform enforcement and recording, thus making available experienced personnel and access to information and records.
- D. When a parent or guardian, immediately called, has come to take charge of the juvenile, and the appropriate information has been recorded, the juvenile shall be released to the custody of such parent. If the parent cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the juvenile may temporarily be entrusted to an adult, neighbor or other person who will on behalf of a parent or guardian assume the responsibility of caring for the juvenile pending the availability or arrival of a parent or guardian.
- E. In the case of a first violation of this Article by a juvenile, the Chief of Police shall cause notice to be given to the parent of such minor. Such notice shall be given by either personal delivery thereof to the parent or by deposit of such notice in the United States mail in an envelope with postage prepaid addressed to such parent at his or her address as shown by records of the Police Department, including information obtained from the appropriate State records and/or any other identifying means. The giving of notice by mail is complete upon the expiration of four days after such deposit of such notice. Proof of the giving of notice by personal delivery or by mail may be made by the certificate of any officer or employee of the Police Department or by affidavit of any person over the age of 18 years naming the person to whom such notice was given and specifying the time, place and manner of the giving of such notice. Such notice shall contain a warning that any subsequent violation of this Article by the minor will result in full enforcement of this Article, including enforcement of parental responsibility and of applicable penalties.

§ 77.16. Violations and penalties.

A. Parents.

- (1) If, after the warning notice given pursuant to § 77-15 of a first violation by a juvenile, a parent violates § 77-12 (in connection with a second violation by the juvenile), this shall be treated as a first offense by the parent. Any parent convicted of violating § 77-13 shall pay a fine of \$200.
- (2) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for all costs incurred by the Town for providing personnel to remain in the company of a juvenile who has been detained as a curfew violator if the parent or guardian does not pick up the juvenile within one hour after receiving notice from the Town that the Town is detaining

the juvenile for a curfew violation. The amount to be paid by the parent or guardian shall be based on the hourly wage of the Town employee who is assigned to remain with the juvenile, plus the cost of benefits for that employee.

- (3) The parent or legal guardian having custody of a juvenile subject to this Article shall be liable for any fine or condition of restitution or reparation imposed by a court upon a curfew violator, provided that the curfew violator has not paid the fine or made restitution or reparation within the time ordered by the court, and further provided that the parent or legal guardian has been made a party defendant in all enforcement proceedings against the curfew violator and shall be served with all citations, summons, complaints, notices and other documents required to be served on the curfew violator defendant.

- B. False certification. Any parent convicted of knowingly providing any false authorization, information or certification, written or verbal, to the Town Police Department in violation of § 77-12 shall pay a fine of \$200.

§ 77.17. Enforceability.

The Council intends that this Article be held inapplicable in such cases, if any, where its application would be unconstitutional under the Constitution of the State of Delaware or the Constitution of the United States of America.

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